

ZBA Minutes – January 9, 2020
ZONING BOARD OF APPEALS
TOWN OF RIVERHEAD
SUFFOLK COUNTY
RIVERHEAD, NEW YORK
(631) 727-3200

These minutes are a summary of the January 9, 2020 Town of Riverhead Zoning Board of Appeals meeting held at the Town of Riverhead Town Hall, Riverhead, NY.

PRESENT:

Leroy Barnes
Lisa Worthington
Otto Wittmeier
Frank Seabrook
Fred McLaughlin ** late arrival
Dawn Thomas, Counsel

ABSENT:

Mr. Wittmeier stated, good evening and welcome to the Zoning Board meeting for January 9, 2020. Hope everyone had a nice holiday season; I'm glad it's behind us so we get back to normal days of living, I guess. If you would all make sure to turn off your cell phones or any devices, please. We have a couple of house cleaning things to do. The first one is Appeal No. 2019-060, Tarra Development, 97 Ellen Street, Riverhead... Ms. Worthington interjected, it's the next one. Mr. Barnes noted, 53, Otto. Mr. Wittmeier replied, I know but that's moved to a reserve decision on January 23rd. Ms. Collins nodded and explained, we have the hearing tonight, though. Mr. Wittmeier stated, oh, we do? Okay. Mr. Barnes asked, are we gonna do 53 on the agenda first or are we gonna jump... Ms. Worthington answered, no, she's going to do 57. Mr. Wittmeier stated, excuse me. We also have an adjournment for February 27 for Robert Caputo, 533 Center Street, Jamesport. So, in case anyone's here, we will not be hearing that tonight. Can I have that moved and seconded?

ADJOURNED

Vice-Chairman Wittmeier announced the adjournment of **Appeal No. 2019-057 – Robert Caputo – 533 Center Street, Jamesport – SCTM No. 600-92-3-20 – RB40 Zoning** - for variances and/or relief from Chapter 301 Section 14 C where proposed second floor habitable space in detached structure deemed not to be a customary accessory use to the principal single-family use and is not permitted; Section 222 E where proposed additions increase gross floor area within required rear yard abutting a rear street line representing an increase in degree of nonconformity of a preexisting nonconforming accessory structure which is not permitted; and Section 17 where proposed impervious surface coverage is 22.2% and maximum permitted is 15%.

A motion was made by Mr. Barnes and seconded by Mr. Seabrook that the appeal be adjourned to February 27, 2020. The motion carried by a roll call vote of all members present:

Mr. Barnes	AYE
Ms. Worthington	AYE
Mr. Seabrook	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	ABSENT

PUBLIC HEARINGS

Appeal No. 2019-053 – Jennifer Sperber and Nathan Edington – 5310 Sound Avenue, Aquebogue – SCTM No. 600-21-1-6 – RA80 Zoning - for variances and/or relief from Chapter 301 Section 23 where proposed side yard setbacks are 20.42' and 20.42' and minimum required is 30'; and where proposed combined side yard is 40.84' and minimum required is 65'.

Nathan Edington of 534 Peconic Bay Boulevard was sworn in. Mr. Edington stated, we're trying to build a house at 5310 Sound Avenue. The setbacks, I guess, are 30' and I don't have it on the side of the house. So, it's a preexisting lot, but it's nonconforming. So, we're just trying to build a 1,700 sf ranch house, board and bat siding, nothing crazy, and we're gonna live there. Mr. Wittmeier asked, anyone have a question on it? Mr. Barnes stated, no, I don't have any questions. We went and looked at it, and thought the site was nice. It looks like it's gonna be good for you. So, I'm good. Mr. Wittmeier asked, anyone in the audience have anything to add to this? There were no public comments. Mr. Wittmeier stated, can I have a reading, please?

A motion was made by Mr. Barnes and seconded by Mr. Seabrook that the appeal be granted as sought. The motion carried by a roll call vote of all members present:

Mr. Barnes	AYE
Mr. Seabrook	AYE
Ms. Worthington	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	ABSENT

DETERMINATION OF THE ZONING BOARD OF APPEALS

APPEAL NO: 2019-053

APPLICANT/PROPERTY OWNER: Jennifer Sperber & Nathan Edington, PO Box 2471, Aquebogue, NY 11931

RELIEF SOUGHT: for variances and/or relief from Chapter 301 Section 23 where proposed side yard setbacks are 20.42' and 20.42' and minimum required is 30'; and where proposed combined side yard is 40.84' and minimum required is 65'.

LOCATION: 5310 Sound Avenue, Riverhead

SCTM#: 600-21-1-6

ZONING DISTRICT: Residence A-80 (RA80)

SIZE OF PROPERTY/REQUIRED SET BACKS: The property is approximately 40,024 sq. ft. or 0.919 acres. Minimum lot area is 80,000 square feet; minimum lot width is 175 feet; maximum impervious surface is 15%; maximum height of residential buildings is 35 feet; minimum front yard depth is 60 feet; minimum either side yard width is 30 feet; minimum both side yards, total width is 65 feet; minimum side yard abutting side street is 60 feet; minimum rear yard depth is 75 feet; accessory in side yard setback is 25 feet; accessory in rear yard setback is 20 feet; accessory setback to side/rear street line is 60 feet.

DATE OF HEARING: 1/9/2020

INSPECTION DATES: 12/5/19, 12/7/19, 12/9/19

SUFFOLK COUNTY PLANNING COMMISSION: Pursuant to the Suffolk County Administrative Code Sections A14-14 to 23 referral of this matter to the Suffolk County Department of Planning and Development was not required.

SEQRA: The Zoning Board of Appeals has visited the property under consideration and reviewed the application and the Town's environmental planner determines that this review falls under Type II 617.5 c(13) and does not require any further action pursuant to SEQRA.

PLEASE TAKE NOTICE that at the public hearings of the Town of Riverhead Zoning Board of Appeals on the above referenced dates, the above referenced appeal was heard, evidence placed into the record and the application was duly considered. Based upon the foregoing, the Zoning Board of Appeals takes the following action:

HISTORY/PROPERTY FACTS

1. An application was made to the Building Department on October 10, 2019 to construct a single family dwelling with three bedrooms and two bathrooms.
2. A denial letter was sent from the Building Department on November 12, 2019 and an application was made to the Zoning Board of Appeals on November 18, 2019. Public hearing was scheduled for December 12, 2019; however, applicant was unable to send certified mailings in time. Hearing was adjourned to January 9, 2020.
3. After reviewing the application, the history of the property and information gathered at the public hearing pursuant to the criteria set forth in Town Law 267-b this Board makes the following findings of fact:
 - a. The property is presently improved with the following structure(s):
 - i. Vacant lot

FINDINGS: The evidence in the record establishes that weighing the benefit of granting the area variance request against the detriment of granting the area variance request to the health, safety and welfare of the community and finds as follows:

1. The variance sought would not produce an impact on adjacent properties or the neighborhood as lot is a buildable lot and setbacks proposed will center the dwelling per side property lines. Dwelling to be designed to be in keeping with the character of neighboring homes.
2. The requested variance is not substantial because the lot is currently a vacant, buildable lot in a residential zoning use district. The dwelling proposed is moderate in size and a suitable size for the dimensions of the undersized lot.
3. The benefit sought by the applicant cannot be achieved by some alternative means because the lot is preexisting and undersized per the current zoning of RA80. Any construction on the lot of a moderately sized dwelling would require relief from this board
4. The requested variance will not have an adverse impact on the physical or environmental conditions in the neighborhood/district as the home will be in keeping with the character and conformity of the surrounding residential properties, and all construction will comply with Town building regulations and Suffolk County Health Department requirements.
5. The alleged difficulty that the property owner is experiencing was not self-created as the lot is a preexisting nonconforming lot and construction of a residence requires relief from this board.

The motion was made by Mr. Barnes and seconded by Mr. Seabrook that the aforementioned determination be approved:

THE VOTE

MR. SEABROOK: AYE MR. BARNES: AYE
MRS. WORTHINGTON: AYE MR. WITTMEIER: AYE
MR. MCCLAUGHLIN: ABSENT
This determination X was ___ was not
therefore duly adopted

Based upon the foregoing, the following area variance is **GRANTED** and, if granted, is subject to the following conditions which, based upon the evidence presented, will minimize the adverse impacts that the variance would have on the community or district as identified above.

NO CONDITIONS

Appeal No. 2019-056 – 15 Bay Avenue LLC (Aqua by American Beech) – 15 Bay Avenue, Aquebogue – SCTM No. 600-87-1-46 – RB40 Zoning - for an interpretation of Chapter 301 Section 222 A where proposing to convert existing 332.9 +/- sq. ft. storage shed into a snack bar which is an expansion of a preexisting nonconforming use.

Charles Cuddy, Esq. stated, may I ask the board...I understood that the earlier decision on the Ellen Street application on the basis that we'd need to have a SEQRA determination from the Planning Board, but I would like to proceed with the application. Mr. Wittmeier asked, that's the one I read, right? Ms. Worthington answered, yes. Mr. Wittmeier added, we're going to. Mr. Cuddy stated, she had just read, I think, the other application. Let me go on the Bay Avenue one, if you like. This is an application on a lot that most people haven't seen which is Bay Avenue at Peconic Bay Boulevard and Peconic Bay. The parcel is approximately 1 acre in size, and it has been developed with a motel, although it's an unusual motel in the sense that it's close to a hotel, but it's been there for over 50 years. In fact, it's preexisting. It's been repaired and rejuvenated by certainly the last two owners. I represent the current owner. The current owner is asking that a shed that's been on this property since it was built, and all I can do is give you a copy of a survey that was done in 1976 because that's the earliest that the file shows any indication of the shed. I've gone back further, and there are some indications it was there in the late 60's and early 70's, and I believe by the statement made by Mr. Murphree, the Building and Planning Director, that, in fact, this is a preexisting shed, and the site is preexisting, too. I would like to hand up to you these surveys just so you can see what I'm speaking about. (Mr. Cuddy submitted them to the board.) I also have, and I'm not working on Carissa to get up and down, but I have two pictures that I think would be helpful. I have...they're colored prints, so I wasn't able to reproduce them...but, I think this shows as it is today this time of year and also in the summer time. So, I'll just hand those up so you can look at them. (Mr. McLaughlin arrived at this time.) So, this shed has been in exactly the same location as it is now. It's been there for over 50 years, probably 60 years. The current owner of this site, and by the way, the site has 18 rooms; it's not large. It's completely isolated from its neighbors in Aquebogue Park which is to the east of it, so no one can even see the east side of the site, and the current owner would like to take it so that in the summer time he can serve snacks and food to his guests. The question then becomes...is that a nonconforming expansion or is it a nonconforming change? And it's our position it's simply a nonconforming change. If you look at the definitions, I think, of change, which is to convert or substitute, all we're doing is taking a shed that from time to time was used as a dressing room and they believe was used as a shower and has water running to it. It most recently was used as a storage place, and it certainly fits as an accessory piece, and it's always been an accessory building at that site, and it doesn't extend anything. It doesn't increase anything. It doesn't widen anything. All it does is change the use from prior uses to a snack bar, and it offends nobody because nobody can see it. So, I would hope that the board could find that this is simply a change so we can go ahead and use it next summer. Mr. Wittmeier asked, so you're just talking about snack foods? What about beverages? Mr. Cuddy replied, I'd assume that at this point he'd maybe have some beverages, not alcohol beverages, but just beverages. Mr. Barnes stated, so, Charlie, you're asking for an interpretation, and it's a change. Mr. Cuddy replied, that's correct. Mr. Barnes continued, would you consider asking for a nonconforming use...going from one nonconforming use to another nonconforming use as a special exception or do you think the interpretation would serve your client better? Mr. Cuddy replied, I think the interpretation would serve him better; that's why I did it that way.

Ms. Thomas stated, just a quick question, Mr. Cuddy...has the hotel or motel ever had a restaurant on site? Any food service on site? Mr. Cuddy answered, I don't believe they have. Ms. Thomas asked, in the past...so since its inception it's really strictly been a hotel? Mr. Cuddy replied, that's right. Ms. Thomas asked, or a motel. And do the rooms have their own food prep... Mr. Cuddy stated, no, no, they don't. Some of them have microwaves, but they don't have food preparation areas. Ms. Thomas stated, okay, not like an efficiency or anything. Mr. Cuddy replied, no. Mr. Barnes asked, how has it been approached with the Health Department? Is the Health Department aware of its existence? Mr. Cuddy replied, not right now because we first want to get the determination and would be subject to the Health Department approval, yes. It just...it seemed to us that it was taking something that existed, and I've done this before with stores, and you take one store that's a jewelry store and you make it into a

dentist office, and it's just change. It's not something that's expanding. Mr. Barnes stated, I know it's not an expansion. Some could argue that it needs a Special Permit from the Town Board. I would not argue that. I would try to take the shorter path if I could, but we have to look and see if the law will allow it. Ms. Thomas handed papers to Mr. Barnes. Mr. Barnes asked Ms. Thomas, what am I missing here? The nonconforming use is a shed 'cause the whole property is nonconforming. (Inaudible) It has changed all its uses over a period of time. (Inaudible) Mr. Barnes asked, Charlie, you believe there was never any kind of food service at the facility? Do you think that's something somebody could find out if there was or wasn't? Mr. Cuddy replied, yes, when I say that, people bring in food. They certainly have a place where they can eat in their... Mr. Barnes interrupted, I meant in the past. I meant as a prior use years ago. Did they ever serve any kind of food at the facility? Mr. Cuddy replied, I'll try to find that out. Mr. Barnes stated, that's what I was asking if you could try to find that out. It may be helpful to the applicant. Mr. Cuddy stated, I understand what you're saying; I will make an effort to find that out. Ms. Thomas stated, I'm just a little stuck on the hotel/motel expanding to a different expanded use which would be that food service that wasn't there previously, and you could ask the Town Board for a Special Permit for that expansion. It's just another step, but it's definitely not precluded from... Mr. Cuddy stated, I understand, it just seemed to me that it was just changing from a type of use that had been made 'cause there were multiple uses of this unit. Whether they served food from it or whether the site served food, I'm not sure. I can't tell you that for forty-fifty years. That I don't know. Ms. Thomas asked, and then are there going to be cooking facilities in there? Mr. Cuddy replied, the most there would ever be, there would be a microwave. No, they're not planning on cooking. Mr. Seabrook asked, and you would only be serving residents of the hotel...guests of the hotel? Mr. Cuddy answered, oh, absolutely. I could not go there. Mr. Barnes stated, I just wonder if the existing lobby ever served food or snacks or if they ever had vending machines. Mr. Cuddy stated, I think they did; I just don't honestly know, and the people who are there now are relatively new. They've only been there a couple years. Mr. Barnes noted, right, they wouldn't have the prior history but... Mr. Cuddy responded, I can go back. I did represent people there maybe thirty years ago, the Dohertys, but I don't recall...they may have had vending machines. I'm gonna try and find out. Mr. Barnes stated, I think it would be helpful. Mr. Wittmeier asked, how long would it be open? Mr. Cuddy answered, during what I would call the season, probably. From the end of April, beginning of May until October. It's right now...you go there, there are a couple of cars. It's open all year long, but they wouldn't be using that all year long. Mr. McLaughlin joked, it's gonna be fifty degrees tomorrow, sixty on Saturday. Mr. Cuddy laughed, I still don't think they'd be there. Mr. Barnes asked, Charlie, have you been able to review any of the assessor's records when they did like data collection in '79-'78? Mr. Cuddy answered, that's how I got back to '71, but I didn't see anything in there. Mr. Barnes asked, nothing in the cards? Mr. Cuddy explained, I wasn't looking for that, so I probably overlooked it. Mr. Barnes added, maybe you should look for that. Mr. Cuddy replied, I will; I will. Mr. Barnes continued, I suspect there was some kind of food service there at one time. Mr. Cuddy noted, I believe they probably had machines there, without question, but I can talk...there are some people that know it better than I do. Mr. Barnes stated, that would be good.

Mr. Wittmeier asked, another question...Charlie, who owns the vacant land that's east of them where the Grey Goose used to be? Do they own it? Mr. Cuddy replied, no, Mr. Calagieri, whose home is on Peconic Bay Boulevard, cleared that anticipating that my client might want to purchase that, but of course, it's nonconforming, so it's a fairly big deal to decide if he wants to do it. Mr. Barnes asked, and then he fenced it off? Mr. Cuddy replied, well you can't get there, but that's why, I think he cleared it deliberately to show that he could expand his site, but he hasn't agreed to that at all. Mr. Wittmeier noted, there's a new bulkhead in there all the way in... Mr. Barnes added, the Town made him do that. They wouldn't dredge the creek. Mr. Cuddy nodded and stated, all of it is relatively new at this point. That whole area. Mr. Barnes noted, well, I have to be honest with you; I think my wife worked there at one time. Mr. Cuddy laughed and asked, did she serve food? Mr. Barnes chuckled, I'm gonna ask her. Mr. McLaughlin joked, bring her in as a witness. Mr. Barnes noted, she has a hell of a memory; I'll tell you that. She remembers what I said to her in 1979. I don't remember what it was, but she was mad at me a long time. All laughed. Mr. Wittmeier joked, memories of last night. Mr. Barnes smiled and replied, ah, be quiet. Mr. Cuddy stated, I will find that out and come back. Mr. Barnes replied, very good. Mr. Cuddy finished, thank you.

Mr. McLaughlin asked, anyone else to be heard? Please step up. Raymond Rieder, 11 Locust Street, Aquebogue, was sworn in. Mr. Rieder stated, I'm glad I heard what this gentleman said that no liquor would be served there.

That's a thumb's up. We have some concerns in the Ock-a-Bock Homeowner's Association; I was secretary for the past ten or twelve years. I resigned last year. None of the officers could make this 'cause they're out of town or flew down to Florida for the winter. We have a good relationship with these new owners. They've done a good job cleaning it up. It's very busy. The occupancy rate of this motel has gone up to almost 100% during the season and even in the off season. They attract a lot of people that want to go to the vineyards, and weddings, and all the rest of it, and they do a good job. We have had some issues with some of the patrons of the motel parking on our street, actually parking in some of our driveways. The motel owner allows dogs, and they've been running loose on the beach. We're putting up leash signs now to hopefully mitigate that, but our issues, I think, are fairly straight forward. There's probably 15 or 20% of the forty homes that are occupied year round, so to get a hold of other people to get a sense of what this could entail, is difficult at this time of the year, but if there's no alcohol to be served, that's a real plus. We want to be sure it's reserved to the 18 rooms because there's only about 18 parking spots in front of it, so we're constantly asking people to move off the street. We have the street signs not to park on the street. It's mostly Locust, but it's also Willow and sometimes on Bay. So, it becomes a problem. We would want to make sure since he's just put in all these boat slips last summer that he's not gonna be attracting people coming in by boat and then they're gonna be going to the so-called snack bar and then feeling that they have a right to the beach, which is a private beach; it's been designated a private beach. We want to keep the relationship good. We would have preferred had the owners, who we know, come to one of our meetings and expressed to us what it is they plan to do or at the very least, send us a letter to the association and say this is what I'd like to do; do you have any objections to this? Can we discuss it? Now, I know that our president who is down in Florida for the winter has tried numerous times to meet with the owners to have just that conversation, not only on this, but on the leash situation and on some other issues in the community. We're not opposing what they're going to do. We just want clarification, and knowing there is no alcohol is a really good thing. People have alcohol in their rooms and maybe occasionally they take a drink down to the beach; that's not the issue. But once you introduce it at the snack bar, what happens then? That's really the substance of what our concerns are, and I'm not sure if the zoning meeting is the right place for this, but before they get the right to go ahead and do this, we'd like to request of them that kind of a meeting. Mr. McLaughlin asked, the folks are here, right? Mr. Cuddy replied, no. Mr. McLaughlin stated, just Charlie. Why don't you try to set up a meeting with them and the local association? Mr. Rieder asked, if we could keep this in abeyance until we at least have that meeting? Mr. McLaughlin answered, oh, we're not doing anything tonight. Mr. Rieder replied, okay, thank you. Mr. McLaughlin continued, give Charlie your number, and why don't you two get together and set up a meeting. Mr. Seabrook asked, do you have a meeting this January? Mr. Rieder answered, we don't have a meeting until Memorial Day because that's when all the snow bunnies come back, but we're not looking to hold it off. I think a meeting of the officers who can be at that meeting would be positive, and then a notice could go out to the rest of the community. We have a very active email list where everyone knows what's going on, and we can communicate it quickly. Mr. McLaughlin replied, okay. Mr. Seabrook asked, are we gonna adjourn this to like the 27th of February or sooner? Mr. McLaughlin stated, the next meeting, two weeks. Mr. Seabrook confirmed, oh, next meeting. Okay. January 23rd. Mr. McLaughlin asked, anyone else to be heard? There were no further comments. Mr. McLaughlin stated, let's move this on to the next meeting. Mr. Seabrook added, Mr. Cuddy, I think it's a great idea, but in order to gain more technicalities I move to adjourn Appeal 2019-056 to January 23rd.

A motion was made by Mr. Seabrook and seconded by Mr. Barnes that the appeal be adjourned to January 23, 2020. The motion carried by a roll call vote of all members present:

Mr. Barnes	AYE
Mr. Seabrook	AYE
Ms. Worthington	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	AYE

minimum required is 40,000 sf; and, proposed Lot 1 is 125.66' and Lot 2 is 124.33' and minimum required is 150'.

Charles Cuddy, Esq. stated, this is a situation where there was a lot that was included in the subdivision, Tall Oak Subdivision, that had Riverhead Water District on it, and it was intended at one time to be used by the water district, but the water was really not potable water. So, they gave up on it years ago. Nevertheless, the lot was still there, and my client has been paying taxes on it for a long time, probably in the vicinity of \$10,000 over a number of years. These two lots together are 79,588 sf. The current zoning would require 80,000 sf. So, essentially we're 412 sf short. The Planning Board was basically satisfied that the lot on the far street, which is a 9,000 sf rectangular [triangular] lot would satisfy this additional requirement, but they had a problem 'cause there's nothing in the Riverhead Town Code that says you can take the contiguous lot and add it to your lot on the far side. So, they asked that we come here to get a confirmation that this was acceptable as far as the area goes. There are going to be two lots; one of which now has a house on it. Lot 1 is 41,446 sf. That was done just for the configuration of the site. So, the second lot's a little bit smaller; it's the 38,142 sf lot. So, we need an area variance for the lot size. We also have a request because of the frontage; the frontage is short approximately 25 feet on each lot, and on your notice, and I'm just asking that you take a notation of this, it says that lot number one is 125; it's not 125. It's 122, so we need a little bit more than the notice is saying. The two lots are correctly added when you add 122 and 124. I have with me a map, and I only have one copy of which, but this is the map that was filed with the County Clerk, and I'd just like you to realize that on this map there are 99 lots in the subdivision. It's a big subdivision, that many of the lots...and it was called Residence C at that time...are half-acre lots. There are a few lots that are larger. The reason for that according to Howie Young who did the map, is that the configuration of this site is a little bit strange. There are places where it dips down significantly. There are places where there are drainage easements. So, he made some of the lots a little bit larger. There was a woman who was, I guess, upset with this, who lives around the corner, lives on a larger lot, but her lot wasn't that way by design, it was because of the way it was laid out. Nearly all the lots in here are in the vicinity of 25, 26, 27,000. The lot immediately to the southwest of us which is lot 70, and I'll show you on the map, is only 27,000 sf, so our lot is certainly as large if not considerably larger than most of the lots in the subdivision. Most of the lots in the subdivision have frontages of 100-130 feet in distance, so when asking for that variance, we're not asking for something that is not already there. I would hope that I can give you two things; I can give you this map as part of your record and you can go through it, and I can also give you a termination statement of the water district which was signed by the Supervisor so that we can go ahead and file this map, assuming that it would be granted. So, I'll hand up to you the map and the termination statement. (He submitted both to the board.)

Mr. Barnes asked, Mr. Cuddy, can you tell me on lot one, who's in lot one? Who lives there? Mr. Cuddy replied, in lot one. I'm sorry...no one. I'm looking at the big map at lot one. No one lives there. Mr. Barnes stated, so the house was built... Mr. Cuddy explained, the house was built, got a permit for it. We even got a C/O for it, which I can explain how that happened. Mr. Barnes replied, no, that's alright. Mr. Cuddy continued, there is a house on lot number one. Mr. Barnes asked, owned by Tarra? Mr. Cuddy answered, owned by Tarra. They anticipated that it was not going to be a very long event; it turned out to be a fairly long event. At this point in time, that house is complete. We have a contract for it. When the contract closes, we have to pay the Town \$70,000 because at the time that the water district credit was given to them, they got \$70,000 from the Town that they didn't have to pay. So, I'm bound by an escrow agreement to give the Town \$70,000 if I close on that lot, but I believe that meeting the general requirements, the area variance doesn't affect the neighborhood adversely. It certainly has little environmental impact because they're homes throughout the site. It's really not substantial. Certainly the total area variance is very minimal. There is some area variance, but again, not substantial for the frontage, but we really have little alternative. This was to be...it would have been two lots on the original map, if not more. Right now it's only two. So, I would ask the board to approve this, and I understand it's subject to getting a SEQRA determination, and I believe the Planning Board is about to do that. Mr. Barnes asked, so, originally, when they did the 99 lots on Tall Oaks Estates, this was proposed to be two lots? Mr. Cuddy replied, no. I think it was originally just labeled water district, but they considered it...they're considered as lots and they came up with the \$70,000. Mr. Barnes stated, okay, let me ask you again...the triangular piece...that says designated to be water district, blah, blah? Mr. Cuddy answered, yes. Mr. Barnes continued, this lot here, which was one tax lot, what necessitated the subdivision? It is because he just wants to build another house? I understand, but... Mr.

Cuddy replied, I think economics certainly did it and on the basis that this was, again, larger than most of the lots in the subdivision. Mr. Barnes replied, I understand. I can follow the logic on that. Does Tarra Development own any other lots in the subdivision that have not been built on? Mr. Cuddy looking back at his client in the audience replied, I'm not sure, but probably not I would guess. Mr. Barnes asked the gentleman in the audience, so, you're all built out? Mr. Cuddy's client responded, all built. Mr. Cuddy added, basically, yes. Basically, this is the last lot essentially. Mr. Barnes stated, this would be number 100. Mr. Cuddy agreed, this would be 100, yes. And, the reason for the small lot is, according to Stan Carey, that the...when the water district does that, they have like a thing...like an overflight like you have at Calverton...they take a lot nearby and they essentially also make that into part of the water district in case there's an extra flow or something. Mr. Barnes asked, so now what happens to that piece? Mr. Cuddy replied, that piece is going to the Town. Mr. Barnes asked, we're getting it no matter what? Mr. Cuddy replied, yes, yes. The reason for that, if you go along the street and you go to the end of it, there's 300 feet of what appeared to be like a berm planted with trees, and this is just part of it, and it's already been determined by the Planning Board that that is going to happen. Mr. Barnes responded, interesting. Okay. Mr. Cuddy continued, I believe that this is not a significant type of variance, but I understand it would be very helpful to have you approve it so we can obtain the subdivision and also pay the Town. Mr. McLaughlin stated, well, we're gonna have a reserve decision for January 23rd for the SEQRA classification by the Planning Board. Mr. Cuddy answered, yes. They said they would do that next week. Mr. McLaughlin replied, we're gonna wait for them to... Mr. Cuddy responded, I understand; I'm just saying that they said they were going to. Mr. McLaughlin asked, anyone else to be heard on this matter? There were no comments from the public. Mr. Cuddy stated, if anyone has any further questions, I've lived with this for a long time, so I'd be happy to answer it.

A motion was made by Mr. Wittmeier and seconded by Mr. Seabrook that the appeal be set for a reserve decision on January 23, 2020. The motion carried by a roll call vote of all members present:

Mr. Barnes	AYE
Mr. Seabrook	AYE
Ms. Worthington	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	AYE

Appeal No. 2019-058 – Eugenia Rodriguez -50 Shirley Street, Wading River – SCTM No. 600-27-1-15.3 – RB80 Zoning - for variances and/or relief from Chapter 301 Section 29 A(2) where fence height as constructed varies up to 18.125' and maximum height permitted is 6'.

Amy DeVito, Woodhull Expediting, 1031 Main Street, Port Jefferson, NY 11777, was sworn in. Ms. DeVito trying to reach the microphone joked, I need a step stool over here. Good evening, Mr. Chairman and members of the board. The applicants purchased their home in the spring of 2017. At the time of their acquisition of the property there was a fairly steep slope in the rear yard, especially in the northeast corner. In late 2017 they applied for a building permit to erect a masonry retaining wall along the perimeter of the rear yard. The purpose of this endeavor was to create a flat rear yard so they could maximize the use of the area. The wall was inspected and approved, and a certificate of compliance was issued. It should be noted that the wall itself remains unchanged from the final inspection and the issuance of the final C/O to date. Shortly thereafter, the applicant erected a six foot PVC fence on the wall to create privacy and most importantly safety for the young children to play and enjoy the yard. My client did not realize at the time that a permit would be required for the fence. I've researched the area and have found some similar circumstances in the surrounding area wherein a retaining wall and fence combination exceed permissible height. I have photos of these properties and would like to submit them to the board along with photos of the subject premises and a view of the subject wall from the street, if I could approach. I'll be happy to answer any questions. (Ms. DeVito submitted photos to the board.)

Mr. Barnes asked, the properties that you pointed out, did they have permits for those walls? Ms. DeVito replied, that I'm not sure of. I haven't FOILED them yet. I can and submit once we have our findings. Mr. Barnes stated,

well, let me ask you, as the expeditor and representing the owners, has there been any discussion between the owners and the neighbors? Ms. DeVito replied, I don't believe so at all. Mr. Barnes asked, do you know if the neighbors object to the wall? Ms. DeVito answered, not that we know of. Nobody has approached them about objection to the wall. Mr. McLaughlin asked, how long has the wall been up? Ms. DeVito stated, it was erected in 2017, and C/O'd in 2018. Mr. Wittmeier asked, and no complaints? Ms. DeVito replied, no complaints. Mr. Barnes questioned, so, the C/O was for the wall, but not the fence? Ms. DeVito replied, that is correct. Mr. Barnes continued, then, when they put the fence on, the Town said no good. Ms. DeVito stated, right. Mr. Barnes asked, did they give them a summons? Did they ask them to appear? Ms. DeVito responded, yes. They received a summons. They've been working with the Town Attorney and the court...I'm not sure what district it is out here, but they've been back and forth with court. I'm not sure where they last left off; they may have received a conditional discharge, but nonetheless we've been making application and going through the process since they were notified of the summons. Mr. Seabrook asked, I'm sorry, the wall received a permit in 2017? Ms. DeVito replied, the wall received a permit in 2017, and it was C/O'd in 2018 or late 2017; I'm not sure of the exact date. Mr. Barnes noted, then they built the vinyl fence on top of it. Ms. DeVito stated, that's correct. Mr. Seabrook added, well, they don't want anybody falling off the Great Wall of China. Ms. DeVito noted, right, there's a pretty sharp drop. They have young children. Mr. Wittmeier asked, was the fence opposed by anyone in the neighborhood? Ms. DeVito answered, not that they know of. Nobody has called me or reached out to them with any opposition. Mr. Barnes asked, so, of course the property's been posted with a big poster in the front. Ms. DeVito replied, that's correct. Mr. Barnes asked, and the adjoining neighbors received a letter? Ms. DeVito answered, yes. Mr. Barnes asked, and you brought affidavits to that affect? Ms. DeVito replied, that's correct. Mr. Barnes stated, I don't see a problem with it. Mr. Seabrook added, I don't see a problem. Mr. Wittmeier noted, I don't either. Mr. Barnes stated, since there's no opposition and the neighbors are not complaining... Mr. McLaughlin noted, five "no problems." Mr. Barnes repeated, five "no problems." Mr. McLaughlin addressed the members of the audience, do you folks have a problem with this or are you here for the next hearing? Audience members stated, they were here for the next hearing, but they don't have a problem with this one. The board chuckled, and Ms. DeVito added, for the record, I don't have a problem with it either. Just though I should add that. Mr. McLaughlin laughed, I guess it's unanimous. What a friendly bunch to start off the new year. That's nice.

A motion was made by Ms. Worthington and seconded by Mr. Seabrook that the appeal be granted as sought. The motion carried by a roll call vote of all members present:

Mr. Barnes	AYE
Mr. Seabrook	AYE
Ms. Worthington	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	AYE

DETERMINATION OF THE ZONING BOARD OF APPEALS

APPEAL NO: 2019-058

APPLICANT/PROPERTY OWNER: Eugenia Rodrigues

RELIEF SOUGHT: for variances and/or relief from Chapter 301 Section 29 A(2) where fence height as constructed varies up to 18.125' and maximum height permitted is 6'.

LOCATION: 50 Shirley Street, Wading River

SCTM#: 600-27-1-15.3

ZONING DISTRICT: Residence B-80 (RB80)

SIZE OF PROPERTY/REQUIRED SET BACKS: The property is approximately 15,000 sq. ft. or 0.34 acres. Minimum lot area is 80,000 square feet; minimum lot width is 175 square feet; maximum impervious coverage

is 15%; maximum height of residential buildings is 35 feet; minimum front yard depth is 60 feet; minimum either side yard width is 30 feet; minimum both side yards, total width is 65 feet; minimum side yard abutting side street is 60 feet; minimum rear yard depth is 75 feet; accessory in side yard setback is 25 feet; accessory in rear yard setback is 20 feet; accessory setback to side/rear street line is 60 feet.

DATE OF HEARING: 1/9/2020

INSPECTION DATES: 1/2/2020, 1/4/2020, 1/7/2020

SUFFOLK COUNTY PLANNING COMMISSION: Pursuant to the Suffolk County Administrative Code Sections A14-14 to 23 referral of this matter to the Suffolk County Department of Planning and Development was not required.

SEQRA: The Zoning Board of Appeals has visited the property under consideration and reviewed the application and the Town's environmental planner determines that this review falls under Type II 617.5 c(12) and does not require any further action pursuant to SEQRA.

PLEASE TAKE NOTICE that at the public hearings of the Town of Riverhead Zoning Board of Appeals on the above referenced dates, the above referenced appeal was heard, evidence placed into the record and the application was duly considered. Based upon the foregoing, the Zoning Board of Appeals takes the following action:

HISTORY/PROPERTY FACTS

1. Property received Certificate of Occupancy (ZB31347) dated February 26, 2008 for single family residence with two car attached garage, rear deck, and covered front entry.
2. Property received Certificate of Compliance (Permit #17-0787) dated August 2, 2018 for miscellaneous residential including retaining wall N/E corner of yard (varying heights – max height 8'). Also includes importation of ~300 cubic yards of soil as per Town Board Resolution #282 dated April 17, 2018.
3. Application was made to the Building Department on October 25, 2019 to legalize existing fence on retaining wall.
4. A denial letter was sent from the Building Department on November 1, 2019 and an application was made to the Zoning Board of Appeals on November 26, 2019.
5. After reviewing the application, the history of the property and information gathered at the public hearing pursuant to the criteria set forth in Town Law 267-b this Board makes the following findings of fact:
 - a. The property is presently improved with the following structure(s):
 - i. Two-frame residence with attached garage
 - ii. Shed (10.1' x 14.3')
 - iii. Fence on retaining wall at varying heights

FINDINGS: The evidence in the record establishes that weighing the benefit of granting the area variance request against the detriment of granting the area variance request to the health, safety and welfare of the community and finds as follows:

1. The variance sought would not produce an impact on adjacent properties or the neighborhood as the fence has been in place for more than a year, and there have been no negative impacts or objections to its construction.
2. The requested variance at some points may be substantial as the height of the fence varies along the perimeter due to the nature of the retaining wall and topography of the lot; however, the fence provides a safe measure against falls from the top of the retaining wall for children on the property. Additionally,

other properties in the community have similar walls with fences, therefore, it is not out of character for the community.

3. The benefit sought by the applicant cannot be achieved by some alternative means because the fence has already been constructed and has been in place for over a year.
4. The requested variance will not have an adverse impact on the physical or environmental conditions in the neighborhood/district as the fence was constructed atop a permitted retaining wall and has no impact on the environmental conditions. The fence also prevents fall hazards.
5. The alleged difficulty that the property owner is experiencing was self-created as though there is a Certificate of Occupancy for the retaining wall, the fence was constructed without a permit; however, that fact does not prohibit this board from granting the relief sought.

The motion was made by Ms. Worthington and seconded by Mr. Seabrook, that the aforementioned determination be approved:

THE VOTE

MR. SEABROOK: AYE MR. BARNES: AYE
MRS. WORTHINGTON: AYE MR. WITTMEIER: AYE
MR. MCLAUGHLIN: AYE
This determination X was ___ was not
therefore duly adopted

Based upon the foregoing, the following area variance is **GRANTED** and, if granted, is subject to the following conditions which, based upon the evidence presented, will minimize the adverse impacts that the variance would have on the community or district as identified above.

NO CONDITIONS

Appeal No. 2019-059 – Michael Tockman – 682 Sound Shore Road, Riverhead – SCTM No. 600-7-3-11 – RA40 Zoning - for variances and/or relief from Chapter 301 Section 11 where as-built deck side yard setback is 13.8' and ZBA Appeal 2018-047 relief granted 14.3'.

Mr. Barnes asked, are these the people that went over 3 inches? Mrs. Tockman answered from the audience, yep. Mr. McLaughlin stated, you guys are in big trouble. Mr. Barnes joked, you're gonna have to take the deck down. Mr. Wittmeier stated, they are actually 5 inches under the variance. Mr. Barnes replied, 5 inches under? Mr. Wittmeier stated, read the thing. Ms. Worthington stated, no, it's 5 inches the other way. Mr. Barnes added, if it was under they wouldn't be here. Ms. Worthington explained, that's what I told him. Mr. Wittmeier continued, deck side yard... Mr. McLaughlin interjected, alright, easy does it.

Mrs. Tockman stated, I'm an attorney. The last time I came up you told me, "You should have told me that first." Mr. McLaughlin laughed, then I'm not gonna tell you again. You have the floor. Mrs. Tockman stated, I'm going to start my statement with, "Do you know that old axiom measure twice, cut once?" We forgot to do that. Unfortunately, we had people helping us, and it came out, I think it's 7 inches too close to the property line from the relief that they previously granted. We have letters from our two neighbors saying that they enjoy the deck and have no complaints about it at all. I handed in the letters. Mr. Barnes stated, well, we don't see your neighbors here. Mrs. Tockman answered, well, one is in New York City, and the other one, I think he's eating dinner. They're having dinner with us tomorrow. Mr. Barnes stated, we've seen many cases like this. It happens, and of course, originally when it was built and you applied for the variance that was a good time for everybody to complain. They didn't then, either, so I personally don't have a problem with it. Mrs. Tockman replied, thank you. Mr. Barnes asked, anybody else? Mr. Seabrook answered, nope. Mr. Barnes noted, I'm ready to move on, the American dream. Mr. McLaughlin stated, let's have a reading.

A motion was made by Mrs. Worthington and seconded by Mr. Barnes that the appeal be granted as sought. The motion carried by a roll call vote of all members present:

Mr. Barnes	AYE
Mr. Seabrook	AYE
Ms. Worthington	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	AYE

DETERMINATION OF THE ZONING BOARD OF APPEALS

APPEAL NO: 2019-059

APPLICANT/PROPERTY OWNER: Michael Tockman, 682 Sound Shore Rd, Riverhead, NY 11901 (mailing)

RELIEF SOUGHT: for variances and/or relief from Chapter 301 Section 11 where as-built deck side yard setback is 13.8' and ZBA Appeal 2018-047 relief granted 14.3'.

LOCATION: 682 Sound Shore Road, Jamesport

SCTM#: 600-7-3-11

ZONING DISTRICT: Residence A-40 (RA40)

SIZE OF PROPERTY/REQUIRED SET BACKS: The property is approximately 12,314 sq. ft. or 0.283 acres. Minimum lot area is 40,000 square feet; minimum lot width is 150 feet; maximum impervious surface is 15%; maximum height of residential buildings is 35 feet; minimum front yard depth is 50 feet; minimum either side yard width is 25 feet; minimum both side yards, total width is 55 feet; minimum side yard abutting side street is 50 feet; minimum rear yard depth is 60 feet; accessory in side yard setback is 20 feet; accessory in rear yard setback is 20 feet; accessory setback to side/rear street line is 50 feet.

DATE OF HEARING: 1/9/2020

INSPECTION DATES: 1/2/2020, 1/4/2020, 1/7/2020

SUFFOLK COUNTY PLANNING COMMISSION: Pursuant to the Suffolk County Administrative Code Sections A14-14 to 23 referral of this matter to the Suffolk County Department of Planning and Development was not required.

SEQRA: The Zoning Board of Appeals has visited the property under consideration and reviewed the application and the Town's environmental planner determines that this review falls under Type II 617.5 c(12) and does not require any further action pursuant to SEQRA.

PLEASE TAKE NOTICE that at the public hearings of the Town of Riverhead Zoning Board of Appeals on the above referenced dates, the above referenced appeal was heard, evidence placed into the record and the application was duly considered. Based upon the foregoing, the Zoning Board of Appeals takes the following action:

HISTORY/PROPERTY FACTS

1. Property received Certificate of Occupancy (ZB 11095) dated September 15, 1988 for addition to residence.
2. Property received Certificate of Occupancy (ZB 15791) dated August 2, 1993 for addition to residence.
3. Property received Certificate of Occupancy (ZB 18485) dated December 6, 1996 for one car garage.
4. Property received Certificate of Occupancy (ZB 34853) dated August 28, 2009 for 9'x13' addition on east side of residence without electric. Property received Letter of PreExisting Use dated August 28, 2009 for

one story wood frame single family dwelling with a covered front porch, rear porch, rear one car garage under, one car attached garage in front, and outdoor shower

5. Relief granted by Zoning Board of Appeals on September 27, 2018 for impervious surface of 22.6% and deck setback of 14.3 feet, Appeal No. 2018-047. As-built survey submitted did not meet setbacks in granted relief.
6. A denial letter was sent from the Building Department on October 23, 2019 and an application was made to the Zoning Board of Appeals on December 3, 2019.
7. After reviewing the application, the history of the property and information gathered at the public hearing pursuant to the criteria set forth in Town Law 267-b this Board makes the following findings of fact:
 - a. The property is presently improved with the following structure(s):
 - i. One story dwelling with attached garage
 - ii. Roof over front deck
 - iii. Outdoor shower
 - iv. Rear deck with railing

FINDINGS: The evidence in the record establishes that weighing the benefit of granting the area variance request against the detriment of granting the area variance request to the health, safety and welfare of the community and finds as follows:

1. The variance sought would not produce an impact on adjacent properties or the neighborhood as though the deck requires a setback variance, the setbacks are less intrusive than the existing permitted garage.
2. The requested variance is not substantial because as the relief sought varies by only 0.5 feet from previously granted relief.
3. The benefit sought by the applicant cannot be achieved by some alternative means because the deck has already been constructed.
4. The requested variance will not have an adverse impact on the physical or environmental conditions in the neighborhood/district as the minimal relief sought alters the setback of the deck by only 0.5' feet.
5. The alleged difficulty that the property owner is experiencing was self-created in that the construction of the deck did not meet the setbacks granted by previous Zoning Board relief; however, that fact does not prohibit this board from granting the relief sought.

The motion was made by Ms. Worthington and seconded by Mr. Barnes that the aforementioned determination be approved:

THE VOTE

MR. SEABROOK: AYE MR. BARNES: AYE
MRS. WORTHINGTON: AYE MR. WITTMEIER: AYE
MR. MCLAUGHLIN: AYE

**This determination X was ___ was not
therefore duly adopted**

Based upon the foregoing, the following area variance is **GRANTED** and, if granted, is subject to the following conditions which, based upon the evidence presented, will minimize the adverse impacts that the variance would have on the community or district as identified above.

NO CONDITIONS

Minutes of December 12, 2019 – A motion was made by Mr. Wittmeier and seconded by Mr. Barnes that the minutes be adopted. The motion was approved by a roll call vote of all members present:

Mr. Barnes	AYE
Mr. Seabrook	AYE
Ms. Worthington	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	AYE

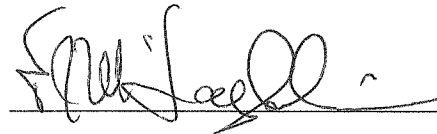
NEXT MEETING DATE – January 23, 2020 at 7:00 PM

A motion to close the meeting was made by Mr. Wittmeier and seconded by Mr. Seabrook. The meeting was closed by a roll call vote of all members present:

Mr. Barnes	AYE
Mr. Seabrook	AYE
Ms. Worthington	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	AYE

Approved and Dated: January 23, 2020

Very truly yours,

A handwritten signature in black ink, appearing to read 'Fred McLaughlin', written over a horizontal line.

Fred McLaughlin, Chairman
ZONING BOARD OF APPEALS